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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,009	11/28/2000	Shu-Chun Jeane Chen	SOM9-2000-0008/1963-7390	8548

7590 04/04/2005

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EXAMINER

BELIVEAU, SCOTT E

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/725,009

Applicant(s)

CHEN ET AL.

Examiner

Scott Beliveau

Art Unit

2614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: 8.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-5, 7, 9-19, 22 and 26-31.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Art Unit: 2614

ADVISORY ACTION

1. The amendment filed 14 March 2005 under 37 CFR 1.116 in reply to the final rejection will be entered upon the filing of an appeal, but is not deemed to place the application in condition for allowance. Upon the filing of an appeal and entry of the amendment, the status of the claims would be as follows:

Allowed claim(s): 8

Rejected claim(s): 1-5,7,9-19,22 and 26-31

Claim(s) objected to: None

Response to Arguments

2. Applicant's arguments filed 14 March 2005 have been fully considered but they are not persuasive.

With respect to the rejection under Reynolds et al. the applicant argues that the logic presented in the grounds of rejection appears inconsistent with respect to the limitations of steps (d) and (e) of claim 1. The examiner respectfully disagrees and shall attempt to clarify his position with respect to the applicant's confusion.

As set forth in the rejection, the examiner's interpretation of the Reynolds et al. reference, as applied to the claims, is such that the system is operable to receive "one or more first tags" associated with generic meta data components derived from a national affiliate and "one or more second tags" associated with local meta data which are operable to "modify" the "one or more first tags" by replacing either in whole or in part the associated content (Para. [0027]). The applicant's interpretation of the examiner's rejection is correct in that the

Art Unit: 2614

processing of the “one or more second tags” (local meta data) serves to modify a portion of the “one or more first tags” (generic meta data) as set forth in the rejection which corresponds to step (d). However, the applicant does not appear to understand how the rejection applies to step (e). As to step (e), the limitation is considered met such that the system, in conjunction with “processing” the “one or more second tags”, is also serving to “process” the “one or more first tags” by virtue of modifying or replacing the generic or national content associated with the “one or more first tags” with local content associated with/from the “one or more second tags”. Accordingly, the “means for processing the one or more first tags” includes “inserting local content” associated with the local meta data “in place of the program content” associated with generic metadata for subsequent distribution to the local area.

With respect to the rejection under Lash et al./Lumley et al., the examiner presumes that applicant’s confusion is premised upon a similar ground as presented in connection with the Reynolds et al. reference. Accordingly, similar logic applies with respect to the limitations of steps (e) and (f) of claim 10 wherein the “EV transport processor [2050]” serves to “process” the “one or more first tags” by virtue of modifying or replacing generic or national content associated with the one or more first tags with local content associated with the one or more second tags.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the

Art Unit: 2614

knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as set forth in the rejection, the Lash et al. reference discloses the particular usage of promotional selection rules, but is silent as to how they are obtained. The Lumley et al. reference discloses a method for developing and distributing promotional selection rules to program distributors wherein promotional material selection algorithms are updated in order to provide optimal promotion selection based upon promotional event logs without involving extensive manual analysis by local operators (Lumley et al.: Col 3, Line 21 – Col 4, Line 32). Accordingly, the Lumley et al. reference provides a teaching, suggestion, or motivation so as to utilize/distribute the disclosed promotional algorithms in an advantageous manner in connection with analogous program distribution centers such as those disclosed by Lash et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343.

The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

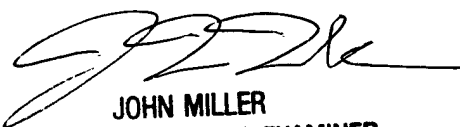
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB

April 1, 2005


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600